

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

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May 8, 2000

Captain Frank Merriman
Los Angeles Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Los Angeles, California 90040

Dear Captain Merriman:

Re: S.I.D. File #: 100-86760/00-0214
L.A.S.D File #: 099-00067-3199-055

The Special Investigations Division of the Los Angeles County District Attorney's Office has completed a review of the June 29, 1999 fatal shooting of Gina Simental by Los Angeles County Sheriff's Deputies Thomas Lambrecht and Michael Wilber. It is our conclusion from the available evidence that Deputies Lambrecht and Wilbur acted lawfully in the defense of others in shooting Ms. Simental.

Our analysis of the evidence in this case is based upon our review of 156 pages of reports and 130 photographs under Sheriff's Department File Number 099-00067-3199-055. In addition we have reviewed a videotape of the scene, recorded by the Vernon Police Department after the shooting, and a videotape containing television news stories of the incident, including video shot from several news helicopters. The Sheriff's Department investigation in this matter was conducted by Sergeants Bill Marsh and Paul Mondry. The District Attorney's Office has not conducted any independent investigation in this matter.

FACTUAL SUMMARY

On June 29 1999, the Vernon Police Department received a telephone call reporting that a shooting had just taken place and the victim was at the McDonald's restaurant at 3737 Soto Street. Officers responded and spoke to the victim [redacted], who had a gunshot wound to her shoulder. [redacted] said that [redacted], Gina Simental, who goes by the name "Niki," had asked to meet with her to discuss [redacted] They bought lunch and sat in Simental's car. According to Ms. [redacted], Simental wanted to renew [redacted], but [redacted] was not interested. They began to argue and Simental pulled out a gun, pointed it at [redacted] and told her, "If I can't have you, no one can." Simental held Ms. [redacted] at gunpoint for approximately an hour, then [redacted] grabbed for the gun. They struggled and the gun was dropped. At that point,



[redacted] got out of the car and ran away. While running away she heard two clicks and then a loud bang and felt pain in her left shoulder.

Ms. [redacted] described to police the vehicle which was still parked at the same location, [redacted] E. 37th Street. Officer [redacted] approached the vehicle which appeared unoccupied. However, as he got closer, Ms. Simental leaned forward from the passenger side and sat upright in the driver's seat. Officer [redacted] ordered her to put her hands up and step out of the vehicle, but she ignored his commands. Other officers from the Vernon Police Department arrived at the scene, but all attempts to convince Ms. Simental to surrender were unsuccessful and she remained in the vehicle.

The police backed away from Ms. Simental's vehicle and treated her as a barricaded suspect. At approximately 2:20 p.m., Vernon requested the assistance of the Sheriff's Department Special Enforcement Bureau, which arrived at the scene at 2:51 p.m. A Crisis Negotiation Team from the Sheriff's Department was also sent to the location. In addition to officers deployed on the ground, at the scene a Sheriff's helicopter circled overhead.

Ms. Simental did not communicate with the officers and remained in the vehicle. She was seen to be writing on paper and to waive a gun around inside the vehicle. On at least two occasions she raised the gun through the sunroof. At approximately 3:22 p.m., Ms. Simental dropped a note out of the window. The note was recovered and seemed to indicate that Ms. Simental wished to speak to several individuals.

A decision was made to attempt to deliver a phone to Ms. Simental. Deputy William Chaffin spoke over a loud speaker and told Ms. Simental that deputies were going to approach her car to deliver a phone so that she could talk to the command center. According to Deputy Chaffin's report, he told her "Niki this is not an act of aggression on our part. We just want to safely deliver the phone so you can talk to someone." Ms. Simental acknowledged the statement by waiving her hand through the sunroof. Chaffin then asked her to throw the gun into the back seat of her car so deputies could safely approach the vehicle. Ms. Simental responded by extending her middle finger through the sunroof in the direction of the deputies. Deputy Chaffin reiterated that the deputies were going to bring her a phone and had no plans to harm her. He asked her if she understood, and Ms. Simental waived through the sunroof.

According to the incident logs kept by the Special Weapons Team and the Crisis Negotiation Team, an attempt was made to deliver the phone at approximately 4:48 pm. Deputy Phillip Martinez, Deputy Joseph Raya and Sergeant Eric Parra advanced toward Ms. Simental's car taking cover behind an armored rescue vehicle. While the team approached, Deputy Michael R. Wilber and Deputy Thomas Lambrecht covered Ms. Simental using long rifles with scopes.

According to the statement of Deputy Martinez, he was at the head of the advancing team. As the team moved toward Ms. Simental's car, he saw her extend the handgun through the driver's

window. Martinez stated he did not feel at this time that the gun was pointed at the team and after stopping they continued approaching slowly. As the team continued to approach, he saw Ms. Simental re-position herself in the seat and she seemed to be watching the deputies through her rear and side-view mirrors. Again she extended the gun outside the driver's window and this time Martinez stated he felt it was pointed in their direction. He advised the team and Sergeant Parra gave an order to back out.

Deputy Martinez stated that the team began backing away and he again asked Ms. Simental to put down the gun. At this time, Martinez said, "the weapon was coming in my direction, pointing directly at me and within a split second I heard a couple of long rifle shots." He saw Ms. Simental slump down. He approached the car, and saw the handgun in her lap.

Deputy Raya was also interviewed and his statement was consistent with that of Deputy Martinez. He said that in the moments before he heard the shots fired he heard someone yell "She's got the gun, she's turning our way!." At that moment he saw the gun pointed in the direction of the deputies and heard the rifle shots.

Sergeant Eric Parra was the team leader for the Special Enforcement Bureau Gold Team. He led the group that attempted to deliver the phone to Ms. Simental. His statement was consistent with those of the other deputies present at the scene. Sergeant Parra said that when the team was approaching the car, Ms. Simental several times extended the handgun out the driver's window. The second time, the deputies were ten to fifteen feet from the car and the team immediately took cover behind the armored rescue vehicle. Deputy Martinez spoke to the suspect and told her to put the handgun down. She complied and Sergeant Parra ordered the team to standby for a short time. As the deputies waited, Ms. Simental again extended the gun out of the window. According to Parra, "her hand was on the trigger." Sergeant Parra said that at that point the gun was pointed directly at the deputies and he ordered the team to withdraw.

According to Sergeant Parra's interview with investigators, the team retreated about ten feet and then stopped to re-assess. Ms. Simental then again extended the gun from the window and pointed it at the deputies. At the same instant, Sgt. Parra heard two gunshots. Parra held the team for a brief period and then approached the car. Ms. Simental was in the driver's seat lifeless and the gun was still in her right hand and resting on her lap.

Deputies Lambrecht and Wilber were deployed at the scene as the "long rifle team" at the time of the shooting. They each have specialized training as long riflemen and each was using a rifle with a scope during the incident. When the decision was made to deliver a phone to Ms. Simental, they were responsible for covering the deputies who approached her car. Both Deputy Wilber and Deputy Lambrecht were interviewed on tape by Sergeants Marsh and Mondry after the incident.

Deputy Lambrecht said that, using his rifle scope, he had a clear view of Ms. Simental throughout the incident. He said she was continually moving within the vehicle and also observed

her writing on paper. At times she was waving a handgun and extending it through the sunroof. As the team delivering the phone approached Ms. Simental, Deputy Lambrecht saw her turn to watch them. He said he saw her extend the gun through the driver's window. At one point, she turned it in the general direction of the approaching deputies. However, the next time she extended the gun, Deputy Lambrecht felt that the gun looked "on single action." Ms. Simental had turned in the seat and based upon her actions, Deputy Lambrecht felt she was about to fire on the deputies. Deputy Lambrecht said he then fired one round and immediately heard a second round.

Deputy Wilbur was interviewed and he said that he fired the second round immediately after Deputy Lambrecht. He said that at the time he fired the shot, the advancing deputies were 15 to 20 feet from Ms. Simental. She had turned in the seat. She had the gun in her right hand and "it came up and twisted up and as soon as it leveled off towards the team, that's when I decided to take the shot."

The video from news helicopters, which provides a somewhat blurred view of Ms. Simental in the moments before the shooting, appears consistent with the deputies' statements. In the video, she can be seen turning her head in the direction of the advancing deputies and extending her hand out the window, but the quality of the tape is insufficient to identify what she is holding.

Ms. Simental was pronounced dead at the scene by paramedics at 4:10 p.m. The gun that was in her hand was determined to be a .357 magnum and had the hammer cocked. There were two expended rounds but no live rounds in the cylinder. From the front passenger seat of Ms. Simental's car, investigators recovered a cutting blade that appeared to have blood at each end. Also recovered from the passenger compartment were several notes some written in English and some in Spanish. The notes included poetry, much of which talks about [redacted]"and "Gina." One poem seems to be titled "[redacted] and Gina, Forever United" and begins "Today we conclude our destiny." On another note is scribbled in English, "I prefer to die the (sic) to live with this pain."

Dr. James K. Ribe performed an autopsy on July 1, 1999 and determined the cause of death to be two fatal gunshot wounds, one passing through the neck and the other through the chest. In addition, Dr. Ribe noted the presence of a two-and-a-half inch slash wound to the neck and a one-and-a-half inch superficial slash wound to the left wrist.

ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731.
In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances,

to be necessary to prevent the injury which appears to be imminent. CALJIC 5.30. 5.32.

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins (1961) 189 Cal. App. 2d 575.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal. App. 2d 577.

The evidence in this case clearly shows that when they fired, Deputies Lambrecht and Wilbur had reasonable cause to believe that Ms. Simental posed an immediate threat to the deputies who were approaching her car. Prior to the arrival of law enforcement, Ms. Simental had shot Ms. [redacted]. When deputies arrived, Ms. Simental refused orders to put down her gun, turned toward the deputies and extended the gun which had the hammer cocked toward the deputies. Although, in fact Ms. Simental's gun was loaded with only two expended cartridges and no live rounds, the deputies had no way of knowing this at the time they fired their rifles.

Under the circumstances as known to them at the time, the Deputies Lambrecht and Wilber were reasonable in believing that Ms. Simental posed an immediate threat to the lives of Sergeant Parra, Deputy Martinez and Deputy Raya. Accordingly, it is the conclusion of this office that Deputies Lambrecht and Wilber acted lawfully in defense of others. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

GIL GARCETTI
District Attorney

By

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c: Deputy Thomas Lambrecht (#[redacted])
Deputy Michael R. Wilber (#[redacted]